

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: M & S Properties, LLC )  
 Dist. 5, Map 72, Control Map 72, Parcel 155.01, ) Sevier County  
 S.I. 000 )  
 Commercial Property )  
 Tax Year 2004 )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,639,000	\$2,091,000	\$3,730,000	\$1,492,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 21, 2005 in Knoxville, Tennessee. The taxpayer was represented by Royce Pruitt, Director of Finance. The assessor of property, Johnny King, represented himself and was assisted by field appraiser, Criss Parrott.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 5.27 acre parcel improved with a restaurant located off the Parkway in Governor's Crossing at 1444 Hurley Drive in Sevierville, Tennessee. Governor's Crossing is a development which includes condominiums, restaurants and a strip mall. The taxpayer purchased its interest in subject property on January 29, 2004 for \$2,300,000. The restaurant was constructed in 1998 in accordance with a ground lease which provides for an annual rental of \$132,000.

The taxpayer contended that subject property should be valued at \$3,368,300. In support of this position, the taxpayer maintained that subject property experiences a loss in value due to the disappointing performance of the restaurant and the bankruptcies of both the strip mall behind subject property and Governor's Theater. In addition, the taxpayer asserted that Governor's Crossing as a whole will continue to struggle until Collier Drive and Middle Creek are connected.

With respect to subject land, the taxpayer argued that only approximately 60% of the acreage has utility because of its location in the floodway/floodplain and access easements. The taxpayer asserted that subject acreage should be appraised at a maximum of \$1,422,000 by assuming 3.16 acres are usable and have a value of \$450,000 per acre. The taxpayer also noted that the ground lease arguably supports a maximum value of \$1,320,000 assuming a 10% capitalization rate.

With respect to subject building, the taxpayer contended that the leasehold currently on the books for \$1,946,300 should be utilized as the basis of valuation. The taxpayer maintained that such an approach is more accurate than the assessor's methodology because it is based on the January 29, 2004 arms-length purchase.

The assessor contended that subject property should be valued at \$3,730,000. In support of this position, the testimony and analysis of Mr. Parrott was offered into evidence. Mr. Parrott introduced numerous improved and vacant land sales he maintained support the current appraisal of subject property. In addition, Mr. Parrott noted that subject land was appraised using a 60% condition factor.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$3,730,000 as contended by the assessor of property.

Since the taxpayer is appealing from the determination of the Sevier County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the taxpayer did not introduce a cost, income or sales comparison approach into evidence. Respectfully, the administrative judge finds that

the taxpayer’s methodology does not comport with generally accepted appraisal practices. Moreover, as noted by Mr. King, Tennessee law requires property be valued in fee simple for ad valorem tax purposes. See *First American National Bank Building Partnership*, (Davidson County, Tax Years 1984-1987) wherein the Assessment Appeals Commission ruled that it “is the entire fee simple unencumbered value and not any lesser or partial interests” which is normally subject to taxation.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2004:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,639,000	\$2,091,000	\$3,730,000	\$1,492,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of April, 2005.

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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Royce Pruitt  
Johnny D. King, Assessor of Property